IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.28705 of 2006

MANAGING DIRECTOR, ASSAM EMPORIUM, ASSAM GOVERNMENT MARKETING CORPORATION LIMITED, PARAGJYOTIKA BHAWAN AMBARI P.S. TOWN AND DISTRICT- GAUHATI-21 THROUGH HAMENDRA NATH SONOWAL ------- **PETITIONER**

**Versus**

1. THE STATE OF BIHAR
2. SUNIL KUMAR KATARUKA C/O SHRI BALA JEE AGENCY, PUNCHSHEEL HOUSE, KIDWAIPURI, PATNA-1

---------- **OPP.PARTIES**

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For the Petitioner : M/S Ravindra Kumar Sinha and N. Ganguly, Advocate
For the State : Mr. Jharkhandi Upadhaya, A.P.P.
For Opp.Party no.2 : M/ S Jayanand, and Shiva Nand Prasad Sinha, Advocate.

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**O R D E R**

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The Managing Director of Assam Government Marketing Corporation Limited (hereinafter referred to as "the Corporation") who along with two other Officials of the Corporation has been arrayed as accused in Complaint Case no.900 (C ) of 2002 has prayed for the quashing of the entire criminal proceeding arising therefrom as against him including the order dated 13.8.2002 passed therein by Sri B.Pandey, Judicial Magistrate, Ist Class, Patna, where under cognizance has been taken for offences under Sections 406 and 420 I.P.C. as also Section 138 of the Negotiable Instruments Act (hereinafter referred to as the "N.I.Act") against all the accused including the petitioner.

One Sunil Kumar Kataruka , the complainant, impleaded

as Opp.Party no.2 herein, claiming to be a shop-keeper in the vicinity of the Branch office of the Corporation at Maurya Lok Complex, Patna, filed the aforesaid complaint on 22.5.2002 inter alia stating that accused no.1, Jatin Bhagwati is the Assistant Manager of Assam Government Emporium, Marketing Corporation Limited and accused no.2, Bipul Kumar Sharma is the deputy of accused no.1 and both of them take active part in executing all the ill and malafide motives of cheating ,misappropriation and breach of trust and that accused no.3, the Managing Director , instructs and controls all the activities of accused nos.1 and 2. It is alleged that accused nos. 1 and 2 approached the complainant and guaranteed the entrustment of Rs.1, 50,000/- on the strength of accused no.3 being a government Officer of Assam Government and on the verbal guarantee and under promise of payment the complainant on 31.12.2001 entrusted Rs.1, 50,000/- by two cheques drawn on Syndicate Bank, Kidwaipuri Branch, which was accepted by accused no.1 and the receipt was counter signed by accused no.2. It is said that the money was entrusted on the condition that as soon as three months are complete, the same will be returned to the complainant. It is alleged that with an intention of wrongful gain the accused issued one cheque , bearing no.420416 dated 1.4.2002 and the other cheque bearing no.420417 dated 16.4.2002 ,each for Rs.75,000/-,but both the cheques were dishonoured due to insufficient funds in the account of the account-holder. It is said that legal notice to the accused was issued on 12.4.2002 demanding payment of the above unpaid cheques within 15 days from the date of

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notice. In response, the accused under a planned conspiracy by letter dated 26.4.2002 requested for 15 days further time to delay the matter and also requested to refrain from taking any action. Since the money was not paid, the complainant was sanguine in his mind that the accused had committed this breach of trust under the name and shadow of being a government organization, which gives a more serious angle to the case. It was pleaded that the accused persons have made themselves liable for prosecution under Section 406, 409, 420 , 120B I.P.C. and Sections 138 and 142 of the N.I. Act.

It has been submitted on behalf of the petitioner that from a plain reading of the complaint petition, it would be apparently clear that no direct allegation or accusation has been made or attributed to the petitioner and in this view of the matter; the proceeding against the petitioner was liable and fit to be quashed. In this connection, it was sought to be submitted that the alleged cheques issued by the complainant were handed over and received by accused nos.1 and 2 and the petitioner herein had no knowledge nor was he informed about the entrustment of the aforesaid cheques to accused nos.1 and 2 and in this view of the matter, the petitioner could not be made liable for commission of offences under Section 406 and 420 I.P.C. since they do not appear to have been made out against him. It was further submitted that it was not this petitioner, who had issued the dishonoured cheques in favour of the complainant nor did he have any knowledge of issuance of such cheques and in this view of the matter, he cannot be said to have committed any offence. In this

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connection, the learned counsel for the petitioner sought to draw my attention to the case of S.M.S. Pharmaceutical Ltd.- Vrs. Nita Bhala , reported in 2005 (4) PLJR, 148 (SC), wherein their Lordships observed that in case an offence under Section 138 of the N.I.Act is committed by a Company, criminal liability for dishonour of the cheque is extended to the officers of the Company , but in such circumstances certain conditions have to be strictly complied with and one of them is that person who had nothing to do with the matter need not be roped in and to escape criminal liability , such person have to prove that the offence was committed without their knowledge or they had exercised due diligence to prevent commission of the offence. The aforesaid decision further observed that merely being a Director of a Company is not sufficient to make the person liable under Section 141 of the N.I.Act , for the purpose of liability of that person it has to be shown that he was incharge of and responsible for the conduct of business of the company at the relevant time and unless such averment of fact is made there can be no deemed liability of the Director in such cases.

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The learned counsel with reference to Rule 37 of the Staff Regulation of the Corporation submitted that the rule specifically provides that an employee shall not borrow money from or in any way place himself under a pecuniary obligation to any employee of the Corporation subordinate to him or any firm or person having dealing with the Corporation, but in the instant case, accused no.1 had taken the money without any prior approval of the Managing Director as is

required by Rule 38(2) proviso of the Regulations. It is also submitted that accused no.1 was empowered to issue cheques up to a limit of Rs.10, 000/- but he had issued a cheque for Rs.75, 000/- without any power sanctioned or knowledge of the present petitioner. It was further pointed out in this connection that when the omission and commission of accused no.1 came to the knowledge of the Managing Director, an F .I.R. was lodged against accused nos. 1 and 2 vide Latasil P.S. Case no.18 of 2003.

The final submission advanced by the learned counsel for the petitioner was that the petitioner being a government official had the protection of Section 197 Cr.P.C. and any prosecution in absence of sanction of the appropriate authority would amount to an abuse of the process of the court.

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The learned counsel for Opp.Party no.2, the complainant, sought to justify the order taking cognizance and resultant criminal prosecution of the present petitioner since he being the Managing Director of the Corporation was responsible for all the acts of omission and commission for and on behalf of the Company and since the cheques issued by accused no.1 had bounced due to insufficient fund in the account of the account-holder, the petitioner herein was vicariously liable for prosecution irrespective of the Staff Regulations of the Corporation, which was a matter of administration inter se the petitioner herein and accused nos.1 and 2 and it could not have a general application in a criminal case.

It appears that the complaint petition is self-contradictory

inasmuch as accused nos.1 and 2 , who had approached the complainant and guaranteed the entrustment of the amount on the strength of the petitioner herein being a Government Officer of the Corporation which would only indicate that the financial help had been sought on a personal level and not on behalf of the Company. It also appears that the cheques had been received by accused no.1 and receipt had been counter signed by accused no.2 and the petitioner herein had neither any knowledge nor role to play therein. Again when the cheques were issued, it was accused no.1 who had issued cheques in contravention of the provision of the Staff Regulations which had bounced and again the petitioner herein had no role to play in the issuance of cheques nor did he have any knowledge of the transaction. Whatever allegations are made are primarily directed against accused nos.1 and 2. Even the allegations under Section 138 of the N.I.Act , the case has been made out against accused nos.1 and 2 alone and not against the present petitioner. That apart the money was never entrusted to the petitioner herein nor was it sought to be entrusted to him.

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In the facts and circumstances of the case, no criminal offence appears even prima facie to have been made out against the petitioner there being no iota in the application or allegations being pointed out .No allegation of the petitioner having received any money or having issued or being connected with the issuance of being dishonoured cheques has been shown in the complaint and the demand of money of the issuance of the cheques appears to be on a

personal level and not at the instant of the present petitioner.

In the result, the order taking cognizance so far as the petitioner is concerned is hereby quashed and the application is allowed.

**( Abhijit Sinha, J)**

**Patna High Court,Patna**
**Dated : the 19th November,2008**
**Nawal Kishore Singh/A.F.R.**

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